



DAILY BRIEFING

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Judge blasts EPA for delays in Clean Air Act implementation

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A federal judge reprimanded the Environmental Protection Agency last week for devoting resources to discretionary activities while it remains years behind schedule in meeting its statutory obligations to regulate hazardous air pollutants as required by the 1990 Clean Air Act.

In an opinion issued last Wednesday, Judge Paul Friedman of the U.S. District Court for the District of Columbia laid out the reasoning behind an order, issued in March, that EPA promulgate regulations according to an accelerated schedule that he said would reflect Congress's original intent in setting a timeline for completion of the work.

The opinion provided insight into the March judgment in favor of the environmental group the Sierra Club in a lawsuit against EPA Administrator Stephen Johnson. That suit mainly addressed a Clean Air Act requirement that the agency identify, by November 1995, the emission sources for the 30 most hazardous air pollutants and, by November 2000, issue emissions standards for those sources. The agency finished identifying the pollution sources in 1999 but has issued standards for only 15 of the 70 different types of sources.

Both sides had presented proposals for a schedule on which the agency would complete the required regulations. EPA argued that the complexity of the task, the need for extensive research and the competition for internal resources necessitated a schedule that would complete one group of regulations by October 2011, and another by December 2012. Steve Page, director of the Office of Air Quality Planning and Standards, said the agency would require about 50 months per regulation.

Friedman rejected that timetable. "If the schedule set by the Clean Air Act for the regulation of these sources is unreasonable, EPA's remedy lies with Congress, not with the courts," he wrote, adding, "Courts tend to reject ... agency approaches to rule-making that sacrifice the timely implementation of the statute in favor of extensive agency information-gathering and analysis."

The schedule Friedman decided on in March requires that the agency complete one group of regulations by June 2009, and another by October 2008.

Friedman also soundly rejected the agency's argument that other obligations preclude it from meeting a tighter schedule. "EPA ... currently devotes substantial resources to discretionary rulemakings, many of which make existing regulations more congenial to industry, and several of which have since been found unlawful," the opinion stated. "It is emphatically not within an agency's authority to set regulatory priorities that clearly conflict with those established by Congress."

He said the agency was required to prioritize mandatory activities over discretionary ones, and suggested that obligations with deadlines should supersede those for which a schedule is not given.

EPA spokeswoman Jennifer Wood declined to say whether the agency is on track to meet intermediate deadlines this December, and whether the agency's Office of Air Resources has continued to direct resources to discretionary rule-makings since the March order. "EPA is diligently working to meet new deadlines set by the court in March," Wood said.

She directed all questions about the possibility of appeal to the Justice Department, which declined to comment.

Jim Pew, a lawyer with Earthjustice, an environmental law group that represented Sierra Club in the case, said EPA had met a deadline to file paperwork for an appeal. He said that keeps the agency's option open, but might not mean an appeal will be pursued.

Pew highlighted a [June report by the Government Accountability Office](#) that found problems with EPA's management of its air toxics program, including the lack of a strategy to finish the work or an estimate of the resources needed to do so, and allowing the program's implementation to be driven by litigation.

"Essentially," Pew said of the court opinion, "Both branches of government have concluded that the executive branch has dropped the ball on this really important public health issue."

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